HB 1648-FN - AS AMENDED BY THE HOUSE

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2020 SESSION

20-2229
04/10

HOUSE BILL

1648-FN

AN ACT relative to the home cultivation of cannabis plants and the possession of certain cannabis-infused products.


COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill permits adults to possess up to ¾ of an ounce of cannabis, 5 grams of hashish, and certain cannabis-infused products; permits adults to cultivate up to 6 cannabis plants at home in a secure location that is not visible from other properties, and to possess and process the cannabis produced from their plants at the same location; permits adults to give cannabis to other adults, provided it is not more than ¾ of an ounce of cannabis, 5 grams of hashish, or up to 300 mg of cannabis-infused products, or 3 immature plants; provides that smoking or vaporizing cannabis in public by an adult would be punishable by a $100 fine; provides that violations of the restrictions on cultivation would be a violation punishable by fine of up to $750; penalizes dangerous, volatile extraction; and permits adults to possess, make, and sell cannabis accessories to other adults.

Explanation: Matter added to current law appears in bold italics.
Matter removed from current law appears [in brackets and struckthrough.]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
AN ACT relative to the home cultivation of cannabis plants and the possession of certain cannabis-infused products.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Statement of Purpose. The general court finds that:

I. Since 2012, Canada, the District of Columbia and 9 states, including Maine, Vermont, and the commonwealth of Massachusetts, have legalized possession and limited cultivation of cannabis by adults 21 years of age and older.

II. Statewide polls have consistently found that most New Hampshire voters support making cannabis legal for adults 21 years of age and older.

III. Cannabis is less harmful than alcohol to the consumer and to society. It is less toxic, less harmful to the body, less addictive, and less likely to contribute to violent or reckless behavior. Adults should not be punished choosing to use cannabis instead of alcohol, if that is what they prefer.

IV. Home brewing of alcoholic beverages is legal in New Hampshire and every other state in the nation.

V. Allowing adults to cultivate their own limited supply of cannabis will provide them with an alternative to buying cannabis from illicit drug dealers.

2 Other Alcohol and Drug Offenses; Possession of Drugs. Amend RSA 265-A:43 to read as follows:

265-A:43 Possession of Drugs. Any person who drives on any way a vehicle while knowingly having in his or her possession or in any part of the vehicle a controlled drug or controlled drug analog in violation of the provisions of RSA 318-B shall be guilty of a misdemeanor, and his or her license shall be revoked or his or her right to drive denied for a period of 60 days and at the discretion of the court for a period not to exceed 2 years. This section shall not apply to the possession of cannabis or hashish as provided in RSA 318-B:2-c, or a personal-use amount of a regulated marijuana-infused product as defined in RSA 318-B:2-c, I(b)].

3 Controlled Drug Act; Personal Possession of Cannabis. Amend RSA 318-B:2-c to read as follows:

318-B:2-c Personal Possession of [Marijuana] Cannabis.

I. In this section:

(a) ["Marijuana"] "Cannabis" includes the leaves, stems, flowers, and seeds of all species of the plant genus cannabis, but shall not include the resin extracted from any part of such
plant and every compound, manufacture, salt, derivative, mixture, or preparation from such resin including hashish, and further, shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination. Marijuana shall not include hemp grown, processed, marketed, or sold under RSA 439-A.

(b) [“Personal use amount of a regulated marijuana-infused product”] “Cannabis-infused product” means one or more products that is comprised of [marijuana, marijuana] cannabis, cannabis extracts, or resins and other ingredients and is intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures[. which was obtained from a state where marijuana sales to adults are legal and regulated under state law, and which is in its original, child-resistant, labeled packaging when it is being stored, and which contains a total of no more than 300 milligrams of tetrahydrocannabinol].

(c) “Possession limit” means:

(1) Three-quarters of an ounce of cannabis, excluding hashish, cannabis-infused products, and growing cannabis plants;
(2) Five grams of hashish;
(3) Cannabis-infused products containing no more than 300 milligrams of tetrahydrocannabinol (THC);
(4) Six cannabis plants, with 3 or fewer being mature, flowering plants; and
(5) Any additional cannabis, hashish, or cannabis-infused products produced from the person’s cannabis plants, provided that any amount of cannabis in excess of ¾ of an ounce of cannabis, 5 grams of hashish, and cannabis-infused products containing no more than 300 milligrams of THC shall be possessed in the same location where the plants were cultivated.

I-a. Except as provided in paragraphs I-b and I-c, if undertaken by a person 21 years of age or older, the following acts shall not be illegal under New Hampshire law, shall not be a criminal or civil offense under New Hampshire law or the law of any political subdivision of New Hampshire, and shall not be a basis for seizure or forfeiture of assets under New Hampshire law:

(a) Possessing, consuming, growing, processing, or transporting an amount of cannabis that does not exceed the possession limit; or

(b) Transferring ¾ of an ounce of cannabis, 5 grams of hashish, cannabis-infused products containing no more than 300 milligrams of THC, or 3 immature, non-flowering cannabis plants to a person who is 21 years of age or older without remuneration. For purposes of this subparagraph, a transfer is for remuneration if cannabis is given away contemporaneously with another transaction between the same
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[paragraph]

I. A person, if a gift of cannabis is offered or advertised in conjunction with an offer for sale of goods or services, or if the gift of cannabis is contingent upon a separate transaction for goods or services; and

(c) Manufacturing, possessing, or purchasing cannabis accessories, or distributing or selling cannabis accessories to a person who is 21 years of age or older.

I-b. No person who is 21 years of age or older shall cultivate cannabis plants except as provided in this section:

(a) Cannabis plants shall not be cultivated in a location where the plants are subject to public view, including to view from another private property, without the use of binoculars, aircraft, or other optical aids.

(b) A person who cultivates cannabis shall take reasonable precautions to ensure the plants are secure from unauthorized access. Cultivating cannabis in an enclosed, locked space to which unauthorized persons do not have access, or other similar security precautions, shall be prima facie evidence of reasonable precautions.

(c) Cannabis cultivation shall only occur at the cultivator’s primary residence.

(d) A person who violates this section shall be guilty of a violation and may be fined not more than $750.

I-c. No person shall consume cannabis in a public place. A person 21 years of age or older who violates this paragraph shall be guilty of a violation and may be fined not more than $100.

II. Except as provided in RSA 126-X, any person under 21 years of age who knowingly possesses 3/4 of an ounce or less of [marijuana] cannabis, including adulterants or dilutants, shall be guilty of a violation, and subject to the penalties provided in paragraph [V] IV.

III. Except as provided in RSA 126-X, any person under 21 years of age who knowingly possesses 5 grams or less of hashish, including adulterants or dilutants, shall be guilty of a violation, and subject to the penalties provided in paragraph [V] IV.

IV. Except as provided in RSA 126-X, any person 21 years of age or older possessing a personal use amount of a regulated marijuana-infused product shall be guilty of a violation, and subject to the penalties provided in paragraph V. Persons 18 years of age or older and under 21 years of age who knowingly possess marijuana-infused products shall be guilty of a misdemeanor.

[V] (a) Except as provided in this paragraph, any person 18 years of age or older who is convicted of violating paragraph II or III[or any person 21 years of age or older who is convicted of violating paragraph IV] shall be subject to a fine of $100 for a first or second offense under this paragraph, or a fine of up to $300 for any subsequent offense within any 3-year period; however, any person convicted based upon a complaint which alleged that the person had 3 or more prior convictions for violations of paragraph [II, III or IV] II or III, or under reasonably equivalent offenses in an out-of-state jurisdiction since the effective date of this paragraph, within a 3-year
period preceding the fourth offense shall be guilty of a class B misdemeanor. The offender shall forfeit the [marijuana, regulated marijuana-infused products] cannabis or hashish to the state. A court shall waive the fine for a single conviction within a 3-year period upon proof that person has completed a substance abuse assessment by a licensed drug and alcohol counselor within 60 days of the conviction. A person who intends to seek an assessment in lieu of the fine shall notify the court, which shall schedule the matter for review after 180 days. Should proof of completion of an assessment be filed by or before that time, the court shall vacate the fine without a hearing unless requested by a party.

(b) Any person under 18 years of age who is convicted of violating paragraph II or III shall forfeit the [marijuana] cannabis or hashish and shall be subject to a delinquency petition under RSA 169-B:6.

V. (a) Except as provided in this section, no person shall be subject to arrest for a violation of paragraph [II, III, or IV] II or III and shall be released provided the law enforcement officer does not have lawful grounds for arrest for a different offense.

(b) Nothing in this chapter shall be construed to prohibit a law enforcement agency from investigating or charging a person for a violation of RSA 265-A.

(c) Nothing in this chapter shall be construed as forbidding any police officer from taking into custody any minor who is found violating paragraph [II, III, or IV] II or III.

(d) Any person in possession of an identification card, license, or other form of identification issued by the state or any state, country, city, or town, or any college or university, who fails to produce the same upon request of a police officer or who refuses to truthfully provide his or her name, address, and date of birth to a police officer who has informed the person that he or she has been found to be in possession of what appears to the officer to be 3/4 of an ounce or less of [marijuana, a personal-use amount of a regulated marijuana-infused product] cannabis or 5 grams or less of hashish, may be arrested for a violation of paragraph [II, III, or IV] II or III.

VI. All fines imposed pursuant to this section shall be deposited into the alcohol abuse prevention and treatment fund established in RSA 176-A:1 and utilized for evidence-informed substance abuse prevention programs.

VII. (a) No record that includes personally identifiable information resulting from a violation of this section shall be made accessible to the public, federal agencies, or agencies from other states or countries.

(b) Every state, county, or local law enforcement agency that collects and reports data for the Federal Bureau of Investigation Uniform Crime Reporting Program shall collect data on the number of violations of paragraph [II, III, or IV] II or III. The data collected pursuant to this paragraph shall be available to the public. A law enforcement agency may update the data annually and may make this data available on the agency’s public Internet website.

VIII. Nothing in this section shall:
(a) Be construed to require an employer to permit or accommodate the use, 
consumption, possession, transfer, display, transportation, sale, or growing of cannabis in 
the workplace or to affect the ability of employers to have policies restricting the use of 
cannabis by employees.

(b) Be construed to permit driving or operating under the influence of drugs or 
liquor pursuant to RSA 265-A, nor prevent the state from enacting and imposing penalties 
for driving under the influence of or while impaired by cannabis.

(c) Be construed to permit the transfer of cannabis, with or without 
remuneration, to a person under 21 years of age, or to allow a person under 21 years of age 
to purchase, possess, use, transport, grow, or consume cannabis.

(d) Prohibit a state or county correctional facility from prohibiting the 
possession, consumption, use, display, transfer, distribution, sale, transportation, or 
growing of cannabis on or in the correctional facility's property.

(e) Prohibit a person or other entity that legally owns, leases, or controls any 
property from prohibiting or otherwise regulating the sale, use, or growing of cannabis on 
or in the property.

4 Controlled Drug Act; Penalties. Amend RSA 318-B:26, II(c) and (d) to read as follows:

(c) In the case of more than 3/4 ounce of [marijuana] cannabis, cannabis-infused 
products containing more than 300 milligrams of THC, or more than 5 grams of hashish, 
including any adulterants or dilutants, the person shall be guilty of a misdemeanor. In the case of 
marijuana-infused cannabis-infused products possessed by persons under the age of 21 [or 
infused products as defined in RSA 318-B:2-c, other than a personal use amount of a 
regulated marijuana-infused product as defined in RSA 318-B:2-c, I(b), that are possessed by a 
person 21 years of age or older], the person shall be guilty of a misdemeanor.

(d) In the case of 3/4 ounce or less of [marijuana] cannabis or 5 grams or less of 
hashish, including any adulterants or dilutants, possessed by a person under 21 years of age, the 
person shall be guilty of a violation pursuant to RSA 318-B:2-c. [In the case of a person 21 years of 
age or older who possesses a personal use amount of a regulated marijuana-infused product as 
defined in RSA 318-B:2-c, I(b), the person shall be guilty of a violation pursuant to RSA 318-B:2-c.]

5 New Paragraph; Controlled Drug Act; Penalties. Amend RSA 318-B:26 by inserting after 
paragraph VIII the following new paragraph:

VIII-a.(a) No person, other than an alternative treatment center approved pursuant to RSA 
126-X, shall perform solvent-based extractions on cannabis using solvents other than water, 
glycerin, propylene glycol, vegetable oil, or food grade ethanol.

(b) No person shall extract compounds from cannabis using ethanol in the presence or 
vicinity of an open flame.

(c) Any person who violates this paragraph shall be guilty of a class A misdemeanor.
Model Drug Dealer Liability Act; Definitions. Amend RSA 318-C:4, I to read as follows:

I. "Illegal drug" means any drug which is a schedule I-IV drug under RSA 318-B, the possession, use, manufacture, sale, or transportation of which is not otherwise authorized by law.

Effective Date. This act shall take effect January 1, 2021.
AN ACT relative to the home cultivation of marijuana plants and the possession of certain cannabis-infused products.

FISCAL IMPACT: [ X ] State [ X ] County [ X ] Local [ ] None

### STATE:

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<thead>
<tr>
<th></th>
<th>FY 2020</th>
<th>FY 2021</th>
<th>FY 2022</th>
<th>FY 2023</th>
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<td>Appropriation</td>
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### COUNTY:

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<td>Expenditures</td>
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### LOCAL:

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<tr>
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### METHODOLOGY:

This bill permits adults to possess up to ¾ of an ounce of cannabis, 5 grams of hashish, and certain cannabis-infused products; permits adults to cultivate up to 6 cannabis plants at home in a secure location that is not visible from other properties, and to possess and process the cannabis produced from their plants at the same location; permits adults to give cannabis to other adults, provided it is not more than ¾ of an ounce of cannabis, 5 grams of hashish, or up to 300 mg of cannabis-infused products, or 3 immature plants; provides that consuming cannabis in public by an adult would be punishable by a $100 fine; provides that violations of the restrictions on cultivation would be a violation punishable by fine of up to $750; penalizes dangerous, volatile extraction; and permits adults to possess, make, and sell cannabis accessories to other adults. This bill affects penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many fewer charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures and fine revenue. However, the entities impacted have provided the potential costs associated with these penalties below.
Judicial Branch

<table>
<thead>
<tr>
<th>Violation Level Offense</th>
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<tbody>
<tr>
<td>Class B Misdemeanor</td>
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<tr>
<td>Class A Misdemeanor</td>
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</tr>
<tr>
<td>Appeals</td>
<td>Varies</td>
<td>Varies</td>
</tr>
</tbody>
</table>

It should be noted that average case cost estimates for FY 2021 and FY 2022 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor.

Judicial Council

<table>
<thead>
<tr>
<th>Public Defender Program</th>
<th>Has contract with State to provide services.</th>
<th>Has contract with State to provide services.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Attorney – Misdemeanor</td>
<td>$300/Case</td>
<td>$300/Case</td>
</tr>
<tr>
<td>Assigned Counsel – Misdemeanor</td>
<td>$60/Hour up to $1,400</td>
<td>$60/Hour up to $1,400</td>
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</table>

It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).

Department of Corrections

<table>
<thead>
<tr>
<th>FY 2019 Average Cost of Incarcerating an Individual</th>
<th>$44,400</th>
<th>$44,400</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 2019 Annual Marginal Cost of a General Population Inmate</td>
<td>$5,071</td>
<td>$5,071</td>
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<tr>
<td>FY 2019 Average Cost of Supervising an Individual on Parole/Probation</td>
<td>$576</td>
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NH Association of Counties

<table>
<thead>
<tr>
<th>County Prosecution Costs</th>
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</thead>
<tbody>
<tr>
<td>Estimated Average Daily Cost of Incarcerating an Individual</td>
<td>$105 to $120</td>
<td>$105 to $120</td>
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</table>

The Judicial Council indicates the bill would decriminalize possession of certain marijuana products. Under current law, possession of the products in the quantities identified in this bill are treated as violation level offenses. Individuals are not entitled to court-appointed counsel for violation level offenses. The Council states this bill would not impact indigent expenditures.

The Department of Justice would not be involved in the prosecution of these offenses, which would be handled by municipal prosecutors and the county attorneys. Appeals from convictions from such offenses would be handled by the Criminal Justice Bureau and could be done within the current budget. The Attorney General's Drug Task Force investigates street-level crimes
that sometimes involve the sale and possession of controlled drugs, including marijuana. If this bill were to pass, the task force's efforts would be redirected away from marijuana cases to other controlled drugs. The Department assumes the bill would have little impact on its prosecution or investigation tasks. When the Department of Justice has investigative and prosectorial responsibility or is involved in an appeal, the Department would absorb the cost within its existing budget.

The Department of Safety indicates there is no way for enforcement or home growers to know how much tetrahydrocannabinol (THC) is contained in a homemade marijuana product to ensure it is below the 300 mg limit. The Department assumes the State Police Forensic Laboratory would be called upon to measure levels of THC. This is not a service that is currently performed with the equipment on hand. In order for the lab to perform this service it would require a $300,000 LC/QQQ instrument and potentially another lab analyst. As an alternative, law enforcement agencies would send the samples to a private laboratory at their own expense. The actual number of samples that will require THC quantitation is not known at this time. The Department states there may be savings to state and local law enforcement based on fewer marijuana samples submitted for analysis and fewer possession of marijuana cases prosecuted. Any such reduction is speculative and indeterminable. Based on information from other states, the Department assumes there would be an increase in impaired driving cases. This would require additional certified Drug Recognition Experts throughout the State for roadside and/or after arrest evaluations of marijuana-impaired operators. There could be additional unrelated charges accompanying the marijuana-related arrests such as an increase in DUI cases and associated analyses. A large increase in submissions related to impaired driving would affect the Toxicology unit in the State Police Laboratory. Depending on the increase in submissions, the laboratory may require additional instrumentation and/or a laboratory analyst to handle the added caseload. Should the State Police Forensic Laboratory need additional instrumentation or added personnel, there would be a need for additional laboratory space, as the current facility cannot accommodate either at this point. The Department assumes there would also be an indeterminable fiscal impact on county expenditures for law enforcement activity and THC quantitation costs.

The New Hampshire Municipal Association indicates legalization of marijuana and hashish is likely to affect municipal expenditures for law enforcement. There may be a reduction in expenditures related to drug enforcement because the sale, possession, and use of these products by adults will no longer be illegal. The Association assumes legalization could result in an increase in usage and an increase in expenditures related to impaired driving enforcement, overdose response, and the prevention of sales to minors. The Association cannot estimate the effect on municipal expenditures, but expects there would be no effect on municipal revenues.
Revenue from fines pursuant to RSA 318-B:2-c is deposited into the alcohol abuse prevention and treatment fund. Any reduction in fines collected will result in an indeterminable decrease of revenue to the alcohol abuse prevention and treatment fund.

The Department of Health and Human Services, Bureau of Drug and Alcohol Services indicates there is uncertainty about the impact of legalizing personal use of marijuana on public budgets in New Hampshire. The Department states that science is divided on the causal effects of marijuana on psychoses, schizophrenia and drugged driving. The Department is unable to determine if these areas would be impacted or if there would be an associated fiscal impact. The Division of Public Health also reviewed this bill and determined there would be no fiscal impact to it’s program areas.

AGENCIES CONTACTED:
Judicial Branch, Departments of Corrections, Health and Human Services, Safety and Justice, Judicial Council, New Hampshire Association of Counties, and New Hampshire Municipal Association